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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,869	01/12/2004	Mark Schmidt	108-209USA000	3575

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EXAMINER


KIM, AHSHIK

ART UNIT PAPER NUMBER

2876

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/755,869	Applicant(s) SCHMIDT ET AL. 	
	Examiner Ahshik Kim	Art Unit 2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/18/04 (preliminary amendment).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/21/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Preliminary Amendment

1. Receipt is acknowledged of the preliminary amendment filed on June 14, 2005. In the
5 amendment claims 1-27, and 45-70 were canceled without prejudice. Currently, claims 28-44
remain for examination.

Drawings

2. This application is filed with informal drawings, which are acceptable for examination
10 purposes only. Formal drawings will be required in response to this Office Action or when the
application is allowed. Since application has a large number of drawings, it is further
respectfully suggested that the specification contains the description of each drawings, and
correctly labeled.

Specification

3. The lengthy specification and a large number of drawings have not been checked to the
15 extent necessary to determine the presence of all possible minor errors. Applicant's cooperation
is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

4. Claim 28 is objected to because of the following informalities:
20

Re claim 28, line 22: substitute "RF" with --RF-based--.

Re claim 28, lines 26-27: delete "first" which is redundant.

Appropriate correction is required.

Obviousness-Type Double Patenting

5 5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

10 A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37
15 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 28-44 are provisionally rejected under the judicially created doctrine of
20 obviousness-type double patenting as being unpatentable over claims 93-107 of pending US Application 10/342,433 to Schmidt et al. (hereinafter "Schmidt").

Claim 28 of the instant application recites "An wireless automatically-activated bar code symbol reading system for use in a work environment, said system comprising:

(A) a wireless hand-supportable bar code symbol reader in two-way RF communication
25 with a base station operably connected to a host system, by way of an N-based wireless data communication link having a predetermined RF communication range over which two-way communication of data packets can occur in a reliable manner, said wireless hand-supportable bar code reader symbol including

(1) a hand-supportable housing;

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(2) a bar code symbol reading mechanism, disposed in said hand-supportable housing, for automatically reading a bar code symbol on an object within a first predetermined time period, and each instant said bar code symbol is read within said first predetermined time period, automatically producing a symbol character data string representative of said read bar code

5 symbol;

(3) a first RF-based transceiver circuit, disposed in said hand-supportable housing, for transmitting to said base station groups of data packets associated with one or more of said produced symbol character data strings;

10 (4) a data packet group buffer, disposed in said hand-supportable housing, for buffering one or more groups of data packets associated with symbol character data strings produced in response to the reading of bar code symbols by said bar code symbol reading mechanism;

(5) a data transmission circuit, disposed in said hand-supportable housing, for transmitting a selected one of said produced symbol character data strings to either said first RF transceiver circuit or said data packet group buffer;

15 (6) a manually-operated data transmission activation switch, integrated with said hand-supportable housing, for generating a data transmission control activation signal in response to the activation of said manually-activatable data transmission switch within said first predetermined time period; and

20 (7) a device controller, disposed within said hand-supportable housing, for controlling the operation of said wireless hand-supportable bar code symbol reader and said first RF-based transceiver circuit; and

(B) said base station installable within a work environment and including

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(1) a base station housing,

(2) a second RF-based transceiver circuit, disposed within said base station housing, for receiving groups of data packets corresponding to the symbol character data strings transmitted from said first RF-based transceiver circuit, and

5 (3) a base station controller mounted in said base station housing, for controlling the operation of said base station;

wherein said first and second RF-based transceiver circuits enable a RF-based wireless data communication link between said wireless hand-supportable bar code reader and said base station;

10 wherein said first and second RF-based transceiver circuits cooperate to enable the communication of data packets between said wireless hand-supportable bar code symbol reader and said base station, over said RF-based wireless data communication link;

wherein said second RF-based transceiver includes means for automatically generating and transmitting a reference signal to said first RF-based transceiver circuit over said RF-based

15 wireless data communication link;

wherein said first RF-based transceiver circuit includes means for automatically receiving said reference signal and detecting the strength of said reference signal;

wherein said device controller is programmed to automatically detect when said wireless and-supportable bar code symbol reader is located inside of said predetermined R-F communication

20 range based on measuring the strength of said detected reference signal, and thereupon to automatically transmit to said first RF-based transceiver, the symbol character data string produced at substantially the same time when said data transmission control activation signal is

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generated while said wireless hand-supportable bar code symbol reader is located inside of said predetermined RF communication range; and

wherein said device controller is programmed to automatically detect when said wireless and-supportable bar code symbol reader is located outside of said predetermined RF communication

5 range based on measuring the strength of said detected reference signal, and hereupon to automatically collect and store in said data packet group buffer, the symbol character data string produced at substantially the same time when said data transmission control activation signal is generated while said wireless hand-supportable bar code symbol reader is located outside of said predetermined RF communication range.”

10 Claim 93 of Schmidt, although not verbatim identical, recites the identical wireless barcode reader. Only difference between claim 28 of the instant application and claim 93 of Schmidt appears to be “a manually-operated data transmission activation switch,” Which is disclosed in claim 104 of Schmidt.

Out-of-range indicator recited in claim 29 of the instant application is disclosed in claim 15 95 of Schmidt. The use of reference signal is also disclosed in claim 29 of instant application and claim 95 of Schmidt. Although the elements in other dependent claims are not exhaustively listed, they are also disclosed in the claims of Schmidt.

Thus, with respect to above discussions, it appears to the Examiner that both apparatuses are identical device. Examiner respectfully requests Applicant to point out the difference 20 between the presented claims and the claims of Schmidt.

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Conclusion

5 I. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Challa et al. (US 6,877,665); Webb et al. (US 6,877,661); Waxelbaum (US 6,869,016); Wilz et al. (US 6,827,273) disclose wireless barcode reader systems. Applicant is respectfully suggested to carefully review these references.

10 II. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Ahshik Kim* whose telephone number is (571)272-2393. The examiner can normally be reached between the hours of 6:00AM to 3:00PM Monday thru Friday.

15 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (571)272-2398. The fax number directly to the Examiner is (571)273-2393. The fax phone number for this Group is (703)872-9306.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [ahshik.kim@uspto.gov].

20 *All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.*

25 Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.



Ahshik Kim
Primary Examiner
Art Unit 2876
August 19, 2005

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